

APR 18 2005
JAC PRODUCTS
APR 18 2005

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To: Victor Hwang
Fax: 703-872-9306
From: Jeff Tuttle
Phone: 248-840-2909
Date: April 18, 2005
Subject: Office Action Response Application# 10/043,592

Details:

Victor, I have addressed your concerns per the attached office action. A detailed discussion of the distinctness of this patent versus the prior art is attached. Also attached are new drawings 5-7, a revised description of the drawings, and revised claims. I can be reached for questions at 248-840-2909.

Kind Regards,
Jeff Tuttle
4/18/05

Jeff Tuttle
4/18/05

Item#3) Preferred embodiment of claims 1-5 are shown in figures 5-7.

Drawing# 5 is an adaptor per claims 1 and 2 that is a mass carrier configured to mate with the garments and adapted to receive mass elements by having a plurality of spaced openings, each opening being suited for selective receipt of a mass element, which are selectable in mass or amount and positionable within the carrier in accordance with such balance and performance characteristics.

Drawing# 6 is a garment per claim 3 that is configured to receive mass elements which can be used to position the mass element or elements at locations on the wearer's body which affect balance and performance characteristics. In this particular case it is a soccer shin pad configured as described.

Drawing # 7 is a garment per claim 4 and 5 that is configured to mate with an adaptor that is a mass carrier. In this case the garment is a soccer shin pad configured as described.

Item#4) Rejection for failure to point out and distinctly claim the subject matter which the applicant regards as the invention: The intent of claims 4 and 5 were to specify that a garment could be designed to receive mass elements directly (per claim 3) or it could be designed to mate with an adaptor that would be the carrier of the mass elements (claim 1 and 2). Claims 4 and 5 have been reworded to clarify this as follows:

4. [revised] The garment of claim 3, which is designed to mate with an adaptor of claim 1 as the method of receipt of a mass element.
5. [revised] The garment of claim 3, which is designed to mate with an adaptor of claim 2 as the method of receipt of a mass element.

Item#5) Rejection per 35 USC.102 per patent being anticipated by prior art.

The following will explain why all the claims cited as prior art all have a very different utility or function in comparison to this application. Also, the different function of these articles will force them to have a different structure and design. Thus, an article designed under this patent application versus the prior art patents would be patentably distinct, could not be covered under both patents, and would not have been anticipated by the prior art.

The first functional difference between the prior art cited and this application is that all the prior art are training devices or exercise devices that rely on using weight to create resistance to build muscles. The article described in this application is completely the opposite; its function is to reduce resistance and allow more effective muscle utilization. It is specifically called out in section VII as follows:

"The effect of modifying the components of balance of a subject is to allow different and more effective muscle utilization, which can improve athletic performance." Further, "The subject is meant to wear the garments while performing the sport in question. The subject's balance is modified to more effectively perform the motions involved in the sport." All prior art devices were designed to be worn during training, not

worn while actually performing the sport and would have hindered the subject if they were worn while performing the motions involved in the sport.

Section VII does note that the articles of this patent could be used in training, but not as resistance trainers, but rather to change the balance of the person so that different muscles are utilized. This is stated as follows:

“this is not utilizing the mass additions as resistance trainers” and “The subject’s balance is modified to allow different muscles or portions of the muscles to be activated easier during exercise.” Again, this is resistance reduction to make it more natural to use different muscles, not increasing resistance.

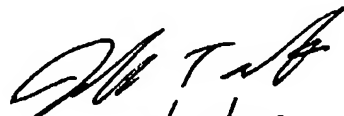
Also in this section it specifically states that the weights would not be added to the area being exercised as a resistance device would, but rather to those locations that change balance.

The idea of using weights to create resistance and train muscles is literally thousands of years old. The idea of using weights to decrease muscle resistance is completely new as far as I have been able to determine. There is nothing in any of the prior art that has any suggestion that they would use weights for a non-exercise application or to reduce resistance. Hence, I feel that there is no evidence that this new idea would have been anticipated by any of the prior art. Further, the form of the articles in this application versus prior art will be distinct and distinguishable.

The fact that this application is concerned with adding small amounts of weight to reduce resistance rather than large amount of weight to increase resistance will force a difference in the form of the articles produced under this patent versus all of the others. This form difference will first be that the locations of weight addition as called out in this application are different than those locations cited to increase resistance in prior art. Secondly, as stated in section VII:

“Note: this is not utilizing the mass additions as resistance trainers, as demonstrated by the locations and amount of weights. The amount of weight used altering balances is not of the same magnitude as weight resistance, with a common weighting being near 60 grams or 0.13 pounds per location.”

Thus, it can be determined whether an article is covered under this patent or the prior art by whether the structure of the garment is designed to hold weights suitable for altering the components of balance of a subject (0.13 lbs typically) or to create muscle resistance for a subject (1-10 lbs typically). Thus, the structure of the garments for prior art would be designed to carry 8 to 80 times the load. The question could come up as to whether an article could be designed to carry both magnitudes of weight. Such an article would be much too bulky for effective use as a balance-modifying device. This would be similar to creating a carrying case that was 6 feet tall and 4 feet wide and 3 feet thick and then stating that its function was to carry a notebook computer. Such a case could certainly still hold a notebook computer, but its function is obviously to carry something larger.


4/18/05

Office Action Summary

Application No.

10/043,592

Applicant(s)

TUTTLE, JEFFREY JOHN-CARL

Examiner

Victor K. Hwang

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 November 2004.
 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
 4a) Of the above claim(s) 6-10 is/are withdrawn from consideration.
 5) ☐ Claim(s) _____ is/are allowed.
 6) ☒ Claim(s) 1-5 is/are rejected.
 7) ☐ Claim(s) _____ is/are objected to.
 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

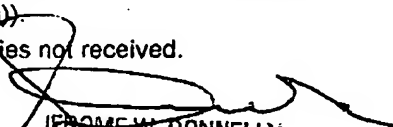
Application Papers

- 9) ☐ The specification is objected to by the Examiner.
 10) ☒ The drawing(s) filed on 14 January 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.


 JEROME W. DONNELLY
 PRIMARY EXAMINER

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____
 4) ☐ Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____
 5) ☐ Notice of Informal Patent Application (PTO-152)
 6) ☐ Other: _____

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DETAILED ACTION

Election/Restrictions

1. Applicant's election of invention I (claims 1-5) in the reply filed on November 1, 2004 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

2. Claims 6-10 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on November 1, 2004.

Drawings

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the adapter (claims 1-2) and garment (claims 3-5) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining

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figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

4. Claims 4 and 5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 4 and 5 appear to depend from claim 3, but the preambles of claims 4 and 5 do not appear to correspond to the invention of claim 3. Additionally, claims 4 and 5 further refer to claims 1 or 2, compounding the lack of clarity in the claim. Presumably, the garment of claim 3 is customizable by use of an adapter, the adapter selectively receiving a mass element via a mass carrier, wherein for claim 5, the mass carrier comprises a body having a plurality of spaced openings suited for selective receipt of a mass element.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-6, as best understood by the Examiner, are rejected under 35 U.S.C. 102(b) as being anticipated by *Jackson, Jr.* (US Pat. 3,759,510). *Jackson, Jr.* discloses a composite exercise garment including various components detachably connected together for use either as a total composite garment, or for use separately or in various combinations, each component of the total garment having exterior pockets which may be either filled or partially filled with weight materials, with the object that by using the proper components of the garment, properly weighted, and performing specified movements, exercises of any desired degree of difficulty are provided for any desired muscles or sets of muscles.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Prince (US Pat. 4,384,369), *Fox, III* (US Pat. 4,953,856), *Cebo-Johnson* (US Pat. 5,553,322), *Raines* (US Pat. 5,937,441), *Cook* (US Pat. 6,200,244 B1) and *Giering* (DE 35 32 512 A1) disclose various means for securing selected amounts of weight to a user's body.

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8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor K. Hwang whose telephone number is (571) 272-4976. The examiner can normally be reached Monday through Friday from 7:30 AM to 4:00 PM Eastern time.

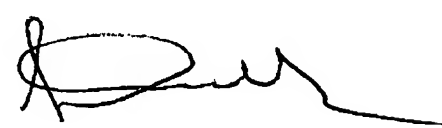
The facsimile number for submitting papers directly to the examiner for informal correspondence is (571) 273-4976. The facsimile number for submitting all formal correspondence at this time is (703) 872-9306.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory L. Huson can be reached on (571) 272-4887.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Victor K. Hwang
January 31, 2005



JEROME W. DONNELLY
PRIMARY EXAMINER

Notice of References Cited	Application/Control No. 10/043,592	Applicant(s)/Patent Under Reexamination TUTTLE, JEFFREY JOHN-CAR	
	Examiner Victor K. Hwang	Art Unit 3764	Page 1 of 1

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
	A	US-3,759,510	09-1973	Jackson, Jr., James W. <i>exercise garments</i>	482/105
	B	US-4,384,369	05-1983	Prince, Lyndonn <i>exercise suit - liquid</i>	482/105
	C	US-4,953,856	09-1990	Fox, III, Charles E. <i>exercise garment</i>	482/105
	D	US-5,553,322	09-1996	Cebo-Johnson, Mark <i>exercise garment</i>	482/105
	E	US-5,937,441	08-1999	Raines, Mark T. <i>weighted suit athletic training</i>	482/105
	F	US-6,200,244 B1	03-2001	Cook, Arnold J. <i>rubber coating over porous fabric</i>	482/105
	G	US-			
	H	US-			
	I	US-			
	J	US-			
	K	US-			
	L	US-			
	M	US-			

FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N	DE 3532512 A1	03-1987	Germany	GIERING, PETER H	A63B 21/00
	O					
	P					
	Q					
	R					
	S					
	T					

NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
 Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

Claims:

1. [original] An adapter for customizing garments through mass addition,
according to characteristics of the wearer relating to balance or athletic
390 performance, comprising: a mass carrier configured to mate with the garments
and adapted to receive mass elements which are selectable in mass or amount
and positionable within the carrier in accordance with such balance and
performance characteristics.
2. [original] The adapter of claim 1 wherein the mass carrier comprises a body
395 having a plurality of spaced openings, each opening being suited for selective
receipt of a mass element to customize the mass distribution.
3. [original] A garment customizable to the balance and athletic performance
characteristics of the wearer, through selective receipt of a mass element or
elements, and which can be used to position the mass element or elements at
400 locations on the wearer's body which affect balance and performance
characteristics.
4. [revised] The garment of claim 3, which is designed to mate with an adaptor
of claim 1 as the method of receipt of a mass element.
5. [revised] The garment of claim 3, which is designed to mate with an adaptor
405 of claim 2 as the method of receipt of a mass element.
6. [withdrawn] A method for determining the customized mass addition
requirements for balance modifying garments that improve athletic
performance comprising the steps of: measuring components of balance for
one or more users of the garments; comparing the measured components of

410 balance to a predetermined reference that is those components of balance
desired, and modifying the mass additive characteristics of the garments to
change the components of balance of each associated user to achieve those
desired.

7. [withdrawn] The method of claim 6 wherein the method of measuring
415 components of balance is done through measurement of muscle development
affected by specific components of balance.

8. [withdrawn] The method of claim 6 wherein the method of measuring
components of balance is done through measurement of posture affected by
specific components of balance.

420 9. [withdrawn] A method for determining the customized mass addition
requirements for balance modifying garments that improve athletic
performance comprising the steps of: measuring performance characteristics
affected by components of balance for one or more users of the garments; and
modifying the mass additive characteristics of the garments to change the
425 performance characteristics of each associated user to achieve those desired.

10. [withdrawn] The method of claim 9 wherein the performance characteristics
affected by components of balance are defined as those performance
characteristics affected by mass addition to locations on the body that affect
components of balance.

430

25 **Description of Drawings:**

Figures 1-4 are referenced in the detailed description of the invention to aid in the understanding of how the components of balance of athletes are differentiated, categorized, and measured as well as how garments are designed or modified for selective mass addition to tune an athlete's balance.

- 30 Figure 5 is a preferred embodiment of an adaptor per claims 1 and 2. In this specific example hook and loop fastening is used to secure the mass in place but other obvious attachment methods such as adhesives or snaps could be used in its place.

Figure 6 is a preferred embodiment of a garment with an integrated mass-carrying article per claim 3. In this case the garment is a soccer shin pad, which is designed to carry
35 mass at a location that affects zone 1 body balance.

Figure 7 is a preferred embodiment of a garment designed to mate with the adaptor as shown in figure 5 and per claims 1 and 2. In this case the garment is a soccer shin pad, designed to mate with a mass-carrying adaptor at a location that affects zone 1 body balance.

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